

## Clerk and Comptroller as County Auditor

Article VIII, Section 1(d) of the Florida Constitution assigns the role of county auditor to the clerk of the circuit court<sup>1</sup>. The clerk is an elected county officer and as such she reports only to the public. The office of the clerk was created as equivalent to and co-existent with the other county officers. It is this co-existent and equal relationship that enables the clerk to function as an independent arm of county government to ensure unbiased oversight, accounting and auditing of county funds. The constitutional design of the clerk's office prevents other county offices from controlling the clerk's audit role, thus eliminating the taint or influence of local politics in the audit process.

The clerks constitutionally created audit role encompasses "all auditing functions<sup>2</sup>." Auditing functions are defined to include both the pre-audit function, involving a review of proposed expenditures prior to the actual disbursement of funds, as well as the performance audit function which follows the expenditure of public funds.<sup>3</sup> The clerk's constitutional role of accountant to the board includes the pre-audit function while the clerk's constitutional role as county auditor encompasses the performance audit function.

The creation of an internal county audit office does not abrogate or minimize the clerk's constitutional duties in any way. In order to alter or amend the Clerk's role, the voter's of the county must vote for and approve a charter amendment or a special law that specifically "provides for"<sup>4</sup> or addresses the clerk's new role. The electorate must decide through election that the clerk's role will be changed.

In Palm Beach County, there has been no vote of the electorate that changes or alters the Clerk's constitutional role. Therefore, the clerk remains the auditor, accountant, treasurer, recorder and custodian of all county funds. Palm Beach County's approved charter addresses the clerk's role in Article IV, Section 4.1 indicating the role of the Clerk of the Circuit Court "shall remain as presently constituted" meaning as set forth in the constitution.

The Clerk's constitutional auditor role encompasses both financial and performance audits. The landmark case of *Alachua County v. Powers*, 351 So.2d 32 (Fla. 1977) states "that the clerk is to

<sup>1</sup> Article VIII, Section 1(d) of the Florida Constitution titled "Local Government" reads as follows:

COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

<sup>2</sup> *Alachua County v. Powers*, 351 So.2d 32 (Fla. 1977).

<sup>3</sup> *W & F Limited v. Dunkle*, 444 So.2d 554 (Fla. 4th DCA 1984).

<sup>4</sup> Article VIII, Section 1(d) of the Florida Constitution titled "Local Government" states that the clerk is auditor "[w]hen not otherwise provided by county charter or special law."

act as county auditor in all auditing functions, except where the board employs an independent auditing firm pursuant to Section 125.01(1)(x), Florida Statutes."

Section 125.01(1)(x) states that the county has authority to "employ an independent certified public accounting firm to audit any funds, accounts, and financial records of the county and its agencies and governmental subdivisions." This provision empowers the county to contract with an independent accounting firm to perform the yearly financial audits of the county. The same section also states: "Entities that are funded wholly or in part by the county, at the discretion of the county, may be required by the county to conduct a performance audit paid for by the county." This gives the county authority to perform performance audits of county funded departments or agencies through its internally created audit department. This authority to conduct performance audits does not eliminate or restrict the Clerk's constitutional audit functions. While such statutory provision might suggest an overlap with the authority of the clerk to perform a full range of audit functions, the Supreme Court, in *Alachua County v. Powers*, 351 So.2d 32, quoting from an earlier Supreme Court case<sup>5</sup>, states "that a mere duplication of official duties may not be in violation of the general intendments of a constitution when statutory regulation of duties is authorized by the constitution." Thus, it is clear that a mere duplication of duties, caused by the county's decision to create a county-controlled internal audit department, in no way restricts the clerk's audit function.

Notably, other than authorizing a yearly financial audit by an external auditing firm, nothing in Section 125.01, Florida Statutes gives the county the authority to restrict or extinguish the clerk's role in executing performance or financial audits. As previously explained, the constitution has granted the sole power to eliminate the clerk auditor role to the electorate.

The clerk's audit role is most effectively summarized in the 1984 Palm Beach County case of *W & F Limited v. Dunkle*, 444 So.2d 554 (Fla. 4th DCA 1984) as follows:

The taxpayers look to the clerk's audits to shield them from the kinds of misuse of public funds that have recently surfaced in other Florida communities and in other jurisdictions. They fervently hope his ministrations will be an effective antidote to several political maladies found in other communities: the soap syndrome--one hand washes the other; complacency--be concerned only when someone gets caught, and lockjaw--don't rock the boat.

The clerk as county auditor is charged with oversight and audit responsibilities while being accountable only to the voters, thus earning the elected clerk of court the nickname of county "watchdog". This unique constitutionally created audit function acts as the final check and balance on county expenditures and county functions. The auditing responsibilities of the clerk are set forth in the Florida Constitution. There are no statutory or constitutional restrictions on the clerk's responsibility for performance audits. The county does retain the ability to hire an independent accounting firm to handle yearly financial audits. In order to handle internal performance audits, the county can create an internal auditing department for board funded programs. However, the creation of a county audit department does not impact the clerk's auditor role. Only the Clerk, separate and co-equal with the county, remains independent in her constitutionally created auditor role.

<sup>5</sup> *State ex.re.l Landis v. Wheat*, 103 Fla. 1, 137 So. 277 (1931).

## **Brief History of the Palm Beach County Internal Audit Committee**

The county charter, adopted in 1984, established the office of county internal auditor. The charter requires the county internal auditor to be either a certified public accountant or a certified internal auditor. The charter authorizes the county internal auditor to hire such assistant auditors as may be necessary and established the general responsibilities of the office to include performing post audits and performance audits, and interfacing with all external auditors for the Board of County Commissioners, the County Administrator, and all other departments, divisions, regulatory boards and advisory boards of County government in all financial matters relating to their official responsibilities. There is no mention of an audit committee in the county charter.

Resolution 87-1226, adopted 11 August 1987, established a six person audit committee to consult with the internal auditor regarding technical issues and to work to assure maximum coordination between the work of the internal auditor's office and the needs of the Board, the administration, and the Clerk in his function as County Auditor. The audit committee originally consisted of one county commissioner, two at large members, the county administrator, the clerk of the board of county commissioners and the county attorney. The resolution required the audit committee to meet quarterly or at the request of one or more of its members and to be responsible for:

- Providing general direction to the internal audit function by reviewing and approving the internal auditor's annual audit plan and any modifications thereto;
- Reviewing internal audit reports;
- Reviewing the external auditors' management letter and approving the assignment of corrective action responsibilities;
- Reporting no less than annually to the Board of County Commissioners on the performance of the internal auditor and the effectiveness of the internal audit function; and
- Acting as a selection committee to interview applicants, negotiate a contract, and make recommendation to the Board of County Commissioners for hiring an internal auditor if the position should become vacant.

Resolution 89-61, adopted 10 January 1989, increased the membership of the committee to seven persons by adding the County Sheriff. The resolution also added the Sheriff's Office to the approved list of departments, divisions and agencies subject to audit by the county internal auditor.

Resolution 92-1893, adopted 15 December 1992, increased the membership of the committee to ten persons by adding a second county commissioner and two members selected by the Solid Waste Authority.

Two other resolutions in the early 1990's (R91-970 and R92-1763) made no changes to the duties or composition of the audit committee.

Resolution R 2005-0372, adopted 15 February 2005, rescinded all previous resolutions and reduced the size of the audit committee to seven persons including one county commissioner, two citizens, the county administrator, the clerk & comptroller, the sheriff and one member appointed by the county commission sitting as the governing body of the Solid Waste Authority. The resolution made no changes in the duties of the audit committee.

*Clerk Note-Undated. Compiled by the Palm Beach County Internal Auditor's office.*

